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"Beneath the Eagle's Wings"

Dry Beaver Inc

D&W Livestock Inc

Victoria Rutson
Section of Environmental Analysis
Surface Transportation Board
1925 K Street
Washington, D.C. 20413-001

Re: STB Finance Docket No. 33407 - Dakota, Minnesota and Eastern Railroad Corporation Construction into the Powder River Basin
Draft Supplemental Environmental Impact Statement Comments

This DSEIS is very confusing. On page 4-11 you state that the 1998 Decision found that the lowest rate BNSF and UP might charge is 8.25 mills per ton mile. From there you work backwards to determine that amount of coal traffic the DME might attract.

STB Docket No. 42051 shows costs as low as 5.93 mills per ton mile for an incumbent carrier from the Antelope Mine in the Southern Powder River Basin to Wisconsin Power and Light Co. This would most likely be in the core market for DME. So, a prudent person could deduce that the incumbent carrier "might" charge 6.00 mills per ton mile or 7.00 mills per ton mile. Why did you assume this 8.25 mills per ton mile figure?

Maybe you did not want to introduce new evidence. But then I get to page 4-17 and I find that the NEMS model you are using assumes a continued historical downward trend for coal transportation costs. Would this downward trend in transportation costs include a downward trend in rail freight rates for coal? Would the downward trend in coal freight rates be a major reason that coal transportation rates are declining? What range did you use for coal freight rates and how much of the transportation costs are these rates?

You say in the 1998 Decision that the argument that PRB rates will decline is "unpersuasive" and a more likely scenario is that the rates will rise 0.50 mills per year through 2007. This is one of the major legs you base the decision on that the DME will be viable. Another is that they will attract enough tonnage to generate a profit and this has some linkage to rates. The third leg is interest rates. When you saw one leg off the stool, it falls over.

The 1998 Decision is based on rail rates that increase. Introducing declining rates into the DSEIS is contrary to the 1998 Decision and in effect introduces new evidence that has consequences to the core the 1998 Decision. It changes the economics. Plug this scenario into table III of the 1998 Decision and run it out to 2025 as you do in the DSEIS with your "rate sensitivity analysis" and the project becomes much less attractive, maybe even a disaster.

To determine the range of adjustments to apply to the NEMS model, the SEA used a three step process with each step based on the 1998 Decision. Then , when you assumed a downward trend in transportation costs [freight rates] that is tantamount to introducing evidence contrary to the basis of the 1998 Decision.

If you assume declining transportation cost (rail rates) for the next twenty years and you use your 1998 Decision to set up your NEMS Model, you must update your 1998 Decision to reflect this new contradictory scenario.

Page 55 of the Decision in MSC v STB states "We expect the board will incorporate its new findings appropriately into the body of evidence that it has already amassed before making a final determination on this matter."

When the document makes statements like "SEA says" or "SEA determined" and it speaks of the "SEA analysis" I assume that all these tasks were accomplished by the people listed in the List of Preparers. Is this correct? Which of these preparers gathered the information on the models uses and who determined which were appropriate? Who developed the transportation rate sensitivity analysis scenarios?

The List of Preparers is inadequate and does not list the qualifications of the preparers as required in the National Environmental Policy Act at 1502.17.

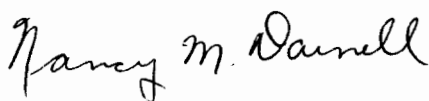
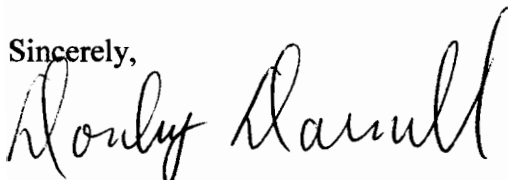
"§1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines) of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement."

"§1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages."

While the DSEIS claims that the requirement of the Circuit Court to complete the Programmatic Agreement before the decision has now been "fixed" because it was signed, albeit months after the decision. Note that none of the "Invited" signatories who are anywhere close to the project ever signed. Only two far removed tribes signed. Not a single South Dakota, Wyoming or Minnesota tribe or Indian organization signed that document. Why did the SEA and the Board "invite" those Native Americans to sign and then totally disregard their opinions on this project? Did the SEA make any effort for this Draft Supplement to identify the reasons why signatures were withheld? Did the SEA make any effort to involve the "invited" signatories in the preparation of the Draft Supplement?

Sincerely,



Donley and Nancy Darnell
Mid-States Coalition for Progress